

**Civil liberties: How M'sia contrasts with S'pore**  
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**by Public House**

In a landmark decision, the Malaysian Court of Appeal ruled on 31st October 2011 that Section 15(5)(a) of the Universities and University Colleges Act 1971 (UUCA) was unconstitutional and violated the freedom of expression.

This was over a case that several local university students had brought to the court after losing a High Court battle in 2010 against their university, which had sought to discipline them under the provisions of the UUCA for observing a by-election campaign in Selangor that year.

In his ruling as part of the 2-1 majority vote, Justice Mohd Hishamuddin Mohd Yunus said that he was “at a loss to understand in what manner a student, who expresses support for, or opposition against, a political party, could harm or bring about an adverse effect on public order or public morality”, since in any case political parties are “legal entities carrying out legitimate political activities”.

In this context, he pronounced that, given that students could already vote and be office-bearers in societies, the UUCA was not a “reasonable” restriction on their constitutionally guaranteed freedom of expression.

Significantly, Justice Hishamuddin based his ruling on an important 2010 Federal Court judgment that said that any restriction imposed by Parliament on the freedom of speech had to be “reasonable” and that the Court had power to examine whether such a restriction was reasonable.

On the other hand, the dissenting Court of Appeal judge in the UUCA case, while similarly invoking the 2010 judgment, drew the opposite conclusion: the restrictions in the UUCA were reasonable because it was up to the legislature to decide otherwise – the Court should not get involved with what was essentially a political process.

In any case the ball is now in the Malaysian government’s court, as it is up to it to decide whether to appeal against the ruling.

The initial reactions from the government suggested that it would not do so, with the de-facto law minister and the deputy education minister separately saying that not appealing would be a signal that the government would push for legislation to amend the UUCA to conform with the court’s ruling. This stance seems to enjoy broad support among the legislature and the mainstream press.

It would certainly be in line with what seems to be an increasingly liberal climate in Malaysia that has seen a surprisingly rapid series of developments over the last few months rolling back anachronistic curbs on civil liberties.

This has come from two directions. First, the Malaysian government has committed to repealing and reforming unpopular laws such as the Internal Security Act, possibly as a means of taking the sting out of criticism from a progressively assertive opposition.

Second, the government has also come under pressure from the courts, which have been developing a markedly liberal bent: Justice Hishamuddin’s opinion was that the 2010 Federal Court ruling had momentarily upheld that some of the fundamental rights guaranteed by the constitution could not be amended by Parliament, overturning decades of precedent.

This seems to be a remarkable turnaround for a judiciary that had been stacked and neutered by former prime minister Dr Mahathir Mohamad in the 1980s in his battle for supremacy over the courts and his political opponents.

Unfortunately, Singapore appears safe from being caught in its neighbour's invigorating tailwinds. Despite making noises about the need to relax curbs on civil liberties, the Singapore government has forcefully defended the Internal Security Act.

Singapore courts are nowhere close to the doctrine that some constitutional rights are inviolate by Parliament. There is also no equivalent of the UUCA in the statutes, but the government still exerts a decisive degree of informal control over the universities and schools, which in any case are assiduously self-censoring enough to discourage students from taking part in politics.

This seems to stem from the government's experience of battling student groups decades ago over political issues and language policies, as well as its reflexive fear that any group that sprouts up will invariably take an anti-government line.

These are outdated notions. Student activism is an important means to developing self-awareness and critical thinking, and it has become plain that excessively stifling it encourages apathy and indifference.

Furthermore, there is little reason to believe that pro-government groups will not take root alongside anti-government ones if restrictions are relaxed, given that the government still enjoys a huge margin of support among youths despite its electoral setback in May 2011.

This is simply the organic process of political development that the government keeps trying to arrest even as it outwardly acknowledges that the electorate is evolving.

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